

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION  
1730 K STREET, N.W., SUITE 600  
WASHINGTON, D.C. 20006

July 25, 1995

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA), : Docket No. WEST 95-214  
Petitioner : A. C. No. 48-01180-03502 CGD  
: :  
v. : :  
: :  
KIEWIT MINING GROUP : :  
INCORPORATED, : Black Butte & Leucite Hills  
Respondent : Mines

**ORDER ACCEPTING RESPONSE**  
**DECISION APPROVING SETTLEMENT**  
**ORDER TO PAY**

Before: Judge Merlin

This case is before me upon a petition for assessment of civil penalties under section 105(d) of the Federal Mine Safety and Health Act of 1977.

On April 28, 1995, the Solicitor filed a motion to approve settlements for the two violations in this case. Each violation was originally assessed at \$7,500 and settlements of \$3,000 apiece are sought by the Solicitor. On June 8, 1995, an order was issued disapproving the settlement and directing the Solicitor to submit additional information to support her motion. On July 7, 1995, the parties filed an amended motion.

Citation No. 3245186 recites that information obtained during an accident investigation showed there was a violation of 30 C.F.R. ' 77.404(c). Electric power was not deenergized in the termination compartment of a trailing cable for a dragline. The power was energized while welding was performed in the high voltage compartment. The violation, which resulted in a fatality, was found to significant and substantial. Negligence was originally determined to be high and the violation was issued as a citation under section 104(d). Subsequently, negligence was reevaluated as moderate and the (d) citation was changed to a section 104(a) citation.

A second citation, No. 3853680, was issued for this situation, finding a violation of 30 C.F.R. ' 77.501. According to the citation, work was performed inside the termination box of the high voltage trailing cable in proximity to exposed energized wires. The circuit was not locked out and suitably tagged. The

violation was found to be significant and substantial. Negligence was originally determined to be high and the violation was contained in a section 104(d) order. Subsequently, negligence was reevaluated as moderate and the violation was modified to one issued under section 104(a).

The parties have submitted a joint amended motion for settlement which sets forth the relevant circumstances as follows:

a. The maintenance that was being performed in the tub of the dragline involved welding of rack segments and rack pads in numerous compartments of the tub; electrical work was not being performed.

b. Respondent had a written lockout/tagout policy requiring that A[wh]en a piece of equipment or machinery is to be inspected, cleaned, repaired, or worked on by an individual, that piece of equipment must be immobilized by the individual prior to commencing work on the equipment.@ The lockout/tagout policy required that electrical equipment, such as the dragline, be locked out at the circuit breaker or electrical disconnect. Respondent's employees were trained on the requirements of its lockout/tagout procedure.

c. Before the welding work began, the dragline was deenergized and the electrical disconnect switch was locked and tagged out as required by the cited standards and Respondent's procedures. In addition, the fence surrounding the substation in which the electrical disconnect was located was locked.

d. Respondent's leadman and a welder were the two individuals directly involved in the welding work being performed in the tub of the dragline. The leadman had inspected the dragline's Atermination compartment,@ i.e., the compartment in the tub where the trailing cables were connected to the dragline, and had determined that welding was not required in that compartment. The leadman communicated this fact to the welder.

e. While the welding work in the tub progressed the electrical power to the dragline remained locked out. Eventually, based on the tasks that he had accomplished and his communications with the welder, the leadman determined that the required welding work had been completed. The leadman began his post-welding cleanup by removing tools and equipment from the tub and he instructed the welder to do the same.

f. The leadman then informed an electrician that the maintenance work had been completed in the tub, that the

lock could be removed from the electrical disconnect, and that the dragline could be reenergized. After the electrician restored power to the dragline, the leadman and welder, who were in different compartments of the tub, had voice communications concerning the fact that the dragline's power and lighting had been restored.

g. Shortly thereafter, power to the dragline was tripped. Unknown to the leadman, the welder had entered the termination compartment and had come in contact with energized equipment.

I accept the representations and arguments advanced in the joint motion, which is exceptionally comprehensive and convincing. Accordingly, as suggested by the parties, negligence is reduced from high to ordinary.

In light of the foregoing, it is ORDERED that the amended settlement motion filed July 7 is ACCEPTED as a response to the June 8, 1995, order.

It is further ORDERED that the recommended settlements be APPROVED.

It is further ORDERED that the operator PAY \$6,000 within 30 days of the date of this decision.

Paul Merlin  
Chief Administrative Law Judge

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